U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 30 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for An Immigrant Worker Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

SELF-PETITIONER

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The Director, Vermont Service Center, denied the petition for an immigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner states that it is an international trading company. It seeks to employ the beneficiary in the United States as its president, pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director approved the petition on January 28, 1998. On August 12, 1998, the director issued a notice of intent to revoke the petition based on the failure of the record to establish that the beneficiary's employment in the United States has been and will be in a primarily executive or managerial capacity. The petitioner responded in a letter dated August 20, 1998 explaining the job duties of the beneficiary in the petitioning organization, including an allocation of the beneficiary's proposed managerial job duties, and provided a brief description of the beneficiary's three subordinates' job duties.

In a decision dated November 27, 1998, the director revoked the petition based on the following: (1) the petitioner's failure to provide a complete description of all employees' job duties, which prevented a finding that the beneficiary would be employed as a manager or executive, other than in job title alone; and (2) the absence of identified salespersons employed by the petitioner demonstrated that the beneficiary would likely perform non-qualifying job duties of the petitioning organization.

The petitioner filed an appeal on December 28, 1998. On appeal, the petitioner submitted a re-typed copy of the letter previously provided by the petitioner in response to the director's notice of intent to revoke the petition. The petitioner also submits documentation, all of which was also previously submitted in its August 1998 response.

To establish eligibility under section 203(b)(1)(C) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Upon review, the AAO concurs with the director's decision and affirms the revocation of the petition's approval.

In his decision, the director noted discrepancies in the petitioner's organization, specifically the lack of sales people to conduct the day-to-day operations of the company. The petitioner is obligated to resolve any inconsistencies in the record by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Simply submitting a copy of its August 20, 1998 letter and the accompanying documentation that was already considered by the director in his decision does not qualify as independent and objective evidence sufficient to support the instant appeal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the director noted that the description of the beneficiary's job duties was insufficient and paraphrased the statutory definition of managerial and executive capacity. On appeal, the petitioner merely re-typed this inadequate position description. Conclusory assertions regarding the beneficiary's employment

capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Finally, the petitioner has not responded to the director's specific request for a complete description of the subordinate employees' job duties and a breakdown of the hours devoted to their tasks. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

The director properly revoked the instant petition. The appeal will be dismissed.

Beyond the decision of the director, the petitioner has submitted inadequate and conflicting evidence regarding the claimed qualifying relationship with the alleged overseas parent company. *See* 8 C.F.R. § 204.5(j)(3)(i)(C). Although the petitioner claims that it is a wholly-owned subsidiary of Dan Dong City Fedder Development Corporation in the People's Republic of China, the petitioner's U.S. tax returns indicate at Schedule E that the beneficiary himself owns 100% of the petitioning entity. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

ORDER: The appeal is dismissed.